

FILE COPY

IN THE
Supreme Court of the United States

OCTOBER TERM, 1939.

No. 18.

HAROLD F. SNYDER,

Petitioner,

AGAINST

CITY OF MILWAUKEE,

Respondent.

BRIEF FOR AMERICAN CIVIL LIBERTIES UNION, INC., AS AMICUS CURIAE.

AMERICAN CIVIL LIBERTIES UNION, INC.,
Amicus Curiae.

ARTHUR GARFIELD HAYS,
RICHARD G. GREEN,
of New York City.

PERRY J. STEARNS,
of Milwaukee,
Counsel.

INDEX.

	PAGE
POINT I.—Appellant's conviction was without due process of law, since it was in violation of his right of freedom of speech and of the press	2
POINT II.—Petitioner's conviction should be set aside because the ordinance has been enforced in a discriminatory manner	3
CONCLUSION.—It is respectfully submitted that the judgment of conviction should be reversed and the complaint dismissed	4

TABLE OF CASES.

C. B. & Q. R. Co. <i>v.</i> City of Chicago, 166 U. S. 226, 233 <i>et seq.</i> ; 17 Sup. Ct. 581	1
Coughlin <i>v.</i> Sullivan, 100 N. J. L. 42; 162 A. 177 (1924)	3
Lovell <i>v.</i> Griffin, 303 U. S. 444; 82 L. E. 660	2, 3
People <i>v.</i> Johnson, 117 Misc. 133; 191 N. Y. Supp. 750 (1921)	3

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**Brief for American Civil Liberties Union, Inc.,
as *Amicus Curiae*.**

The American Civil Liberties Union, Inc., submits this brief because of its interest in the question of free speech raised herein.

There can be no difference of opinion on the proposition that it is essential to the functioning of democracy that there be preserved the right of all persons not only freely to express their opinions, but also to circulate written expression of opinion. It appears to us that, although ostensibly the ordinance involved in this case purports to prevent the littering of the streets, its effect is to suppress the free dissemination of opinion.

Since young movements and minority groups are ordinarily impecunious, they must rely largely on the handbill, distributed without cost, to give publicity to their views. To suppress the distribution of the handbill would, there-

fore, be unfair to those who cannot afford to express themselves in any other manner.

The facts are covered in the briefs of the parties.

POINT I.

Appellant's conviction was without due process of law, since it was in violation of his right of freedom of speech and of the press.

This Court has recently held in the case of *Lovell v. Griffin*, 303 U. S. 444, 82 L. E. 660 (opinion by the Chief Justice), that an ordinance of the City of Griffin which banned the distribution of circulars or other literature without a permit from a City Manager, was invalid as a violation of the fundamental personal rights and liberties protected by the Fourteenth Amendment.

Now comes the City of Milwaukee and seeks to do by indirection what it cannot do directly.

By embellishing its ordinance with the trimmings of a police power statute which on its face expresses a desire to keep the streets clean, the respondent attacks the foundations of one of the basic American liberties, a free press. But, as was pointed out in *Lovell v. Griffin, supra* (at p. 452), where an attempt was made to distinguish between the use of the words "distribution" and "publication," the latter being concededly under the protection of the Constitution:

"The ordinance cannot be saved because it relates to distribution and not to publication. 'Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value.' *Ex parte Jackson*, 96 U. S. 727, 733."

The City of Milwaukee gives to "distribution" the new name of "littering" and seeks thereby to achieve the same forbidden end. Nor does it limit its ban to commercial literature, which might have been within its rights. (See *People v. Johnson*, 117 Misc. [N. Y.] 133, 191 N. Y. S. 750 [1921]; *Coughlin v. Sullivan*, 100 N. J. L. 42, 162 A. 177 [1924]).

It is contended that the prohibition here, because it bans all distribution, is not within the principle of *Lovell v. Griffin, supra*, since there distribution was permitted but a license was first required. But the ban here is even more inclusive.

This ordinance is so broad that the sale of newspapers or any other publications in the streets might come within its condemnation. What is there to prevent the police, if someone buys a newspaper, reads the headlines, and then drops the newspaper on the sidewalk, from arresting the newsboy who sold the paper? The logical implication of the ordinance makes the distribution of literature a crime, not because the distributor is thereby committing a crime, but because as a result of such distribution another individual, the recipient of the printed matter, may commit a crime by littering the streets. Distribution of every kind leads to a certain amount of littering. The effect of such an ordinance, therefore, might be to prohibit distribution of material of a minority political party.

POINT II.

Petitioner's conviction should be set aside because the ordinance has been enforced in a discriminatory manner.

The evidence shows that not the litterers themselves, but only the distributors of the handbills were arrested (R., 9, 11, 14).

This shows the discrimination in the enforcement of the ordinance. It has been repeatedly held by this Court, as stated in *C. B. & Q. R. Co. v. City of Chicago*, 166 U. S. 226, 233, *et seq.*, 17 Sup. Ct. 581, that

"A valid law may be wrongfully administered by officers of the state so as to make such administration an illegal burden and exaction upon the individual."

CONCLUSION.

It is respectfully submitted that the judgment of conviction should be reversed and the complaint dismissed.

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION, INC.,
Amicus Curiae.

ARTHUR GARFIELD HAYS,
RICHARD G. GREEN,
of New York City.

PERRY J. STEARNS,
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